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juries resulting from collision with a street car, an instruction that the motorman should use ordinary care to check the speed of his car as soon as he sees that a traveler is about to attempt to cross in dangerous proximity is correct without qualifying the expression ordinary care by the words "as an ordinarily prudent person acting prudently under the circumstances would have exercised," particularly as defendant requested instructions using the expression "ordinary care" without qualification.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 509-512, 526; Dec. Dig. § 228.\* 12 Va.-W. Va. Enc. Dig. 841; 14 Va.-W. Va. Enc. Dig. 966; 15 Va.-W. Va. Enc. Dig. 950.]

**5. Appeal and Error (§ 362\*)—Assignments of Error—Sufficiency.**—An assignment of error not made in the petition for the writ of error, and appearing for the first time in the reply brief, will not be considered.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1960, 1961, 3282-3284; Dec. Dig. § 362.\* 1 Va.-W. Va. Enc. Dig. 503; 14 Va.-W. Va. Enc. Dig. 80; 15 Va.-W. Va. Enc. Dig. 59.]

Error to Hustings Court of Richmond.

Action by Samuel Meyer against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

*H. W. Anderson, A. B. Guigon, and T. Justin Moore*, all of Richmond, for plaintiff in error.

*O'Flaherty, Fulton & Byrd*, of Richmond, for defendant in error.

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VIRGINIA RY. & POWER CO. *v.* MEYER.

March 11, 1915.

[84 S. E. 744.]

**Damages (§ 132\*)—Personal Injuries—Award.**—Where a female motorist was injured in a collision with a street car, and her sufferings were serious and protracted, an award of \$2,500 damages cannot be held excessive.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 372-385, 396; Dec. Dig. § 132.\* 4 Va.-W. Va. Enc. Dig. 206; 12 Va.-W. Va. Enc. Dig. 852; 14 Va.-W. Va. Enc. Dig. 304; 15 Va.-W. Va. Enc. Dig. 253.]

Error to Hustings Court of Richmond.

Action by Emma Meyer against the Virginia Railway & Power

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

*H. W. Anderson, A. B. Guigon, and T. Justin Moore*, all of Richmond, for plaintiff in error.

*O'Flaherty, Fulton & Byrd*, of Richmond, for defendant in error.

PERKINS *v.* SOUTHERN RY. CO.

March 11, 1915. Rehearing Denied June 10, 1915.

[85 S. E. 401.]

**1. Railroads (§ 350\*)—Accident at Crossing—Question for Jury—Contributory Negligence.**—In an action for injury at a crossing, where defendant's negligence in failing to give the statutory signals was conceded, held, on conflicting evidence involving the intelligence and veracity of witnesses, that plaintiff's contributory negligence was for the jury.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1152-1192; Dec. Dig. § 350.\* 4 Va.-W. Va. Enc. Dig. 143; 14 Va.-W. Va. Enc. Dig. 300; 15 Va.-W. Va. Enc. Dig. 242.]

**2. Railroads (§ 346\*)—Accident at Crossing—Burden of Proof—Contributory Negligence.**—In an action for injuries at a crossing, the burden of establishing plaintiff's contributory negligence was on the defendant.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1117-1123; Dec. Dig. § 346.\* 4 Va.-W. Va. Enc. Dig. 142; 14 Va.-W. Va. Enc. Dig. 299; 15 Va.-W. Va. Enc. Dig. 247.]

Error to Circuit Court, Pittsylvania County.

Action by one Perkins against the Southern Railway Company. Judgment for defendant, and plaintiff brings error. Reversed, and judgment entered for plaintiff for the amount provisionally awarded by the verdict.

*Volney E. Howard* and *Wm. M. Murrell*, both of Lynchburg, for plaintiff in error.

NORFOLK SOUTHERN R. CO. *v.* WHITEHURST.

June 10, 1915.

[85 S. E. 458.]

**Carriers (§ 32\*)—Interstate Commerce—Preferences—Right of Shippers.**—The rules of the Interstate Commerce Commission, formulated pursuant to U. S. Comp. St. Supp. 1911, c. 1 (U. S. Comp. St.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.